

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 24, 2023 at 10:30 a.m.

1. **23-21205-E-7**
BLF-3

JERAMIE SABELMAN
Michael Hays

**CONTINUED MOTION TO REJECT
LEASE OR EXECUTORY CONTRACT
6-29-23 [59]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Lease Parties, Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The court notes, Creditor MJ Shelton Holdings LLC, who Trustee is attempting to reject a lease from, is not listed on the Certificate of Service. Therefore, it is not clear whether MJ Shelton Holdings LLC received proper notice. At the hearing, counsel confirmed that the MJ Shelton Holdings, LLC was not served.

The Motion to Reject Lease or Executory Contract was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

No opposition was stated at the hearing.

The Motion to Reject Lease with MJ Shelton Holdings LLC is granted, and the Chapter 7 Trustee is authorized to reject Nonresidential lease with MJ Shelton Holdings LLC for the real property commonly known as 2952 Esplanade, Ste. 130, Chico, California.

Nikki B. Farris, the Chapter 7, (“Movant”) moves to reject the following leases (the “Leases”):

1. 2995 Esplanade, Ste. 104, Chico, California - Nonresidential lease with Mark Leiker Properties; and
2. 2952 Esplanade, Ste. 130, Chico, California - Nonresidential lease with MJ Shelton Holdings LLC.

Movant asserts that the Leases are financially burdensome and not otherwise beneficial to the estate. Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases.

A review of the docket shows that Debtor has only scheduled one of the two leases: the unexpired lease with Mark Leiker Properties for 2995 Esplanade, Ste. 104, Chico, California. Official Form 106G at Line 2.3. Dckt. 18. Debtor has not disclosed the lease with MJ Shelton Holdings LLC for 2952 Esplanade, Chico, California.

Movant states they received a copy of the lease documents for the undisclosed 2952 Esplanade lease which evidences a lease for personal office use that expires on September 30, 2024. *Id.* The lease verifies the monthly rent is \$1,339.00 through September 30, 2023, and \$1,379.00 through September 30, 2024. *Id.*, Exhibit B, Dckt. 61.

Movant has included both leases as exhibits with this motion. Dckt. 72.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based

on sound business judgment, but only on bad faith, or whim or caprice.” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

DISCUSSION

Here, Movant has demonstrated several sound business judgment reasons for rejecting the Leases. The Leases were obtained to operate a restaurant. Debtor is no longer operating the restaurant, thus, rejection is appropriate to avoid unnecessary claims, liabilities, and expenses.

Upon review of Movant’s request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the Leases. Therefore, the Motion is granted, and Movant is authorized to reject the following leases, pursuant to 11 U.S.C. § 365(a):

1. 2995 Esplanade, Ste. 104, Chico, California - Nonresidential lease with Mark Leiker Properties.

As provided in Federal Rule of Civil Procedure 54(b) and Federal Rules of Bankruptcy Procedure 7054 and 9014(c), the court shall enter a separate order authorizing the rejection of the above lease.

The court’s separate Order authorization of the forgoing lease was entered on July 21, 2023. Order; Dckt. 82.

BIFURCATED PROCEEDING FOR MJ SHELTON HOLDING, LLC LEASE

The Trustee having not served MJ Shelton Holdings LLC with the Motion for the rejection of the lease for the 2952 Esplanade, Ste. 130, Chico, California property, the court that claim for relief for a continued hearing and separate order thereon.

On July 21, 2023, Movant filed a Certificate of Service indicating that on July 21st, MJ Shelton Holders was served the Notice of Continued Hearing, Motion to Reject Nonresidential Leases, Declaration, and Exhibits in Support of Motion. Dckt. 86. No opposition or responsive pleading has been filed by MJ Shelton Holders.

Upon review of Movant’s request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the lease with MJ Shelton Holders, LLC. Therefore, the Motion is granted, and Movant is authorized to reject the following leases, pursuant to 11 U.S.C. § 365(a):

- 2952 Esplanade, Ste. 130, Chico, California - Nonresidential lease with MJ Shelton Holdings LLC.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Reject Lease or Executory Contract filed by Nikki B. Farris, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Movant is authorized to reject:

1. 2952 Esplanade, Ste. 130, Chico, California -
Nonresidential lease with MJ Shelton Holdings LLC.

The rejection of the above leases is effective upon issuance of this order, no further act of the Chapter 7 Trustee required.

**The Court shall conduct the 11:30 a.m. Status Conference
in this Case in conjunction with this 10:30 Confirmation Hearing**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. No Certificate of Service was filed. At the hearing, **XXXXXXXXXXXX**

The Proof of Service states that the Motion and supporting pleadings were served on Debtor [(*pro se*), Debtor’s Attorney], Chapter 12 Trustee, [Official Committee of Creditors Holding General Unsecured Claims / creditors holding the twenty largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, 202x. By the court’s calculation, xx days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days’ notice for opposition).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Confirm the Modified Plan is granted.

The debtor, Jeffrey E Dyer and Jan E Wing-Dyer (“Debtor”) seeks confirmation of the Modified Plan because walnut prices for the 2022 crop were historically low, which caused Debtor to list their real property located at 1575 Bay Flat Road, “Bodega Bay Property.” Declaration, Dckt. 408. The Modified Plan delays payment of the July 30, 2023 Plan payment until the Bodega Bay Property is sold or October 31, 2023. If a sale is not accomplished, the Plan provides for the sale of Debtor’s Walnut Orchard. Modified Plan, Dckt. 407. 11 U.S.C. § 1229 permits a debtor to modify a plan after confirmation.

CREDITOR CITIZENS BUSINESS BANK'S OPPOSITION

On August 9, 2023, Creditor Citizens Business Bank ("Citizens") filed an Opposition. Dckt. 411. Citizens opposes on the following grounds:

1. The existing Plan already provides a remedy for breach - The Plan currently in effect provides the remedy of default to sell the Lamb Ranch, thus, this "back-up" plan to sell the Bodega Bay Property is not necessary.
2. Delaying payment does not cure default - Citizens states that delays have changed the amortization of the secured debt resulting in the payment of more interest and less principal, in addition to increased expenses.
3. It is not clear whether Debtor is still a Family Farmer as much of what they have funded the Plan with is not from income of crops, but rather from selling properties and getting loans.

CREDITOR RABO AGRIFINANCE LLC'S LIMITED OPPOSITION

Rabo Agrifinance LLC ("Rabo") filed a limited opposition on August 10, 2023. Dckt. 413. Rabo states Debtor has never timely made a Plan payment. Rabo states this is Debtor's sixth Plan default. Rabo does not oppose the Modified Plan, however, notes that no motion has been filed seeking authority to approve the sale of the Bodega Bay Property, nor has Debtor submitted any evidence that they have accepted or received an offer to purchase the Bodega Bay Property.

Rabo does not object so long as in the event Debtor is unable to make the Plan payment by October 31, 2023, the Plan's default provisions must kick in so Trustee can proceed with marketing and selling the Lamb Ranch, which is expected to pay all creditors in full.

DISCUSSION

The court appreciates creditors concerns regarding the Modified Plan. Debtor has had two prior modified plans, including the current confirmed plan. The First Modified Plan proposed a cure of Debtor's default by contemplating the sale of Debtor's Woodland commercial property. Motion to Confirm, Dckt. 176. Debtor's Second Modified Plan proposed a cure and stated that farm income, real estate income, and significant equity in the Bodega Bay Property allows them to make the proposed payment. Declaration, Dckt. 307. Additionally, the sale of the Lamb Ranch would be possible in the event of a default. Modified Plan, Dckt. 306.

The numerous modified plans call into question the feasibility of the current proposed Modified Plan. Here, Debtor is now proposing to sell the Bodega Bay Property. Proposed Plan, Dckt. 407. This was contemplated in Debtor's Declaration in Support of their Second Modified Plan. Dckt. 307. Thus, it appears the sale of the Bodega Bay Property has been an option to Debtor to fund the Plan. It is unclear to the court why Debtor needs to modify the current Plan in order to become current. Rather, it appears Debtor could simply sell the Property and pay off their default.

On May 9, 2023, the court entered its order authorizing the employment of Jeffrey E. Dyer as the Realtor to market for sale the 1575 Bay Flat Road Property. Debtor's Motion to Modify Plan filed on July 26, 2023, states that while the Property has been listed for sale for sixty days, it has not generated a purchase agreement. No information is provided concerning the listing price, changes in the listing price, or testimony of the Realtor of his opinion for the marketing and sale of this Property.

In reviewing the Declaration of Jeffrey Dyer, the court notes the following with respect to his personal knowledge testimony (Fed. R. Evid. 602):

- ◆ Jeffrey Dyer provides his legal opinion that the proposed Modified Chapter 12 Plan "complies with the relevant provisions of Title 11 of the United States Code including Chapter 12."
- ◆ Jeffrey Dyer provide some generic testimony about some unidentified secured claims having their payment terms extended.
- ◆ Jeffrey Dyer provides his personal testimony that he generate income from sales of walnuts and real estate commissions.
- ◆ Jeffery Dyer, the Debtor, testifies that he has listed the Bay Flat Road Property for sale and that he, Jeffery Dyer the Debtor, has been actively marketing the Property for sixty days. The court has authorized the employment of Jeffrey Dyer as the Realtor for the marketing and sale of that Property. (It appears that the court, through the court's error, did not appreciate that the person being "hired" by the Debtors was one of the Debtors. The court notes that the Motion does not hide that the Jeffery Dyer to be hired is the Debtor Jeffery Dyer.)
- ◆ Jeffery Dyer provides testimony of his efforts in prosecuting this case and plan in support of the assertion that he is doing so in good faith.
- ◆ Jeffery Dyer provides his factual finding that the amounts being disbursed under the proposed Modified Plan are not less than what would be disbursed to creditors in a Chapter 7 case.
- ◆ Jeffery Dyer testifies that the Bay Flat Road Property has been listed for sale for \$1,399,000.

As of the August 24, 2023 hearing, the Bay Flat Road Property has been listed for sale for sale for approximately one hundred and five (105) days, with no motion to approve sale having been filed.

At the hearing, **XXXXXXXXXX**

~~The Modified Plan complies with 11 U.S.C. §§ 1222, 1225(a), and 1229 and is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Chapter 12 Plan filed by Jeffrey E Dyer and Jan E Wing-Dyer (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion is granted, Debtor’s Chapter 12 Plan filed on July 26, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, transmit the proposed order to Name of Trustee (“the Chapter 12 Trustee”) for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.~~

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2023. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p>The Motion for Allowance of Professional Fees is granted.</p>

Bachecki, Crom & Co., LLP, the Accountant ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 7, 2020, through November 16, 2022. The order of the court approving employment of Applicant was entered on February 16, 2020. Dckt. 212. Applicant requests fees in the amount of \$9,634.00 and costs in the amount of \$0.80.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assessing the estate's interest in MEPCO Label Systems. The Estate has \$728,616.33 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Efforts to Assess Property of the Estate: Applicant spent 18.0 hours in this category. Applicant assessed the estate's interest in MEPCO Label Systems and various potential claims arising from that interest.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Jay D. Crom, Managing Partner	0.10	\$575.00	\$57.50
Jay D. Crom, Managing Partner	17.90	\$535.00	<u>\$9,576.50</u>
Total Fees for Period of Application			\$9,634.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$0.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
PACER	\$0.80
Total Costs Requested in Application	\$0.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$9,634.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$0.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$9,634.00
Costs and Expenses	\$0.80

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Bachecki, Crom & Co., LLP (“Applicant”), Accountant for Kimberly J. Husted, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the
Chapter 7 Trustee

Fees in the amount of \$9,634.00
Expenses in the amount of \$0.80

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. [10-27435-E-7](#)
[DNL-15](#)

THOMAS GASSNER
Richard Chan

**MOTION FOR COMPENSATION FOR
CURREN VALUATIONS, OTHER
PROFESSIONAL(S)**
8-1-23 [[280](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2023. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.
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Curren Valuations, the Appraiser (“Applicant”) for Kimberly Husted, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees.

Fees are requested for the period August 22, 2019, through December 31, 2021. The order of the court approving employment of Applicant was entered on August 29, 2019. Dckt. 160. Applicant requests fees in the amount of \$30,975.00.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A

professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assessing shares' values in MEPCO Label Services. The Estate has \$728,616.33 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Efforts to Assess Property of the Estate: Applicant spent 137.90 hours in this category. Applicant completing an appraisal of the fair market value of Class B non-voting shares in the equity of MEPCO Label Services.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel C. Current	137.90	\$250.00	<u>\$34,475.00</u>
Total Fees for Period of Application			\$34,475.00

Applicant notes that they received an advance of \$3,500.00, thus, applicant is only requesting fees in the amount of \$30,975.00.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$34,475.00 are approved pursuant to 11 U.S.C. § 330. The Chapter 7 Trustee is authorized to pay \$30,975.00, the remaining balance after Applicant's initial advance, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Curren Valuations, the Appraiser for Kimberly J. Husted, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Curren Valuations is allowed the following fees and expenses as a professional of the Estate:

Curren Valuations, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$34,475.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Appraiser for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay \$30,975.00 of the fees, as the remaining balance after the \$3,500.00 advance, allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2023. By the court’s calculation, 23 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Trustee Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p>The Motion for Allowance of Trustee Fees is granted.</p>
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Kimberly J. Husted, the Chapter 7 Trustee, (“Applicant”) for the Estate of Thomas A. Gassner (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 7, 2017, through August 24, 2023.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an

ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the applicant must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate included significant time and expenses on behalf of the Chapter 7 Trustee, as the case was lengthy in time and was more litigious than the typical Chapter 7 case. The Estate has \$728,616.33 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$552,957.10	\$27,647.86
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$33,397.86
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$33,397.86
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$33,397.86

The fees are computed on the total sales generated \$602,957.10 of net monies (exclusive of these requested fees and costs).

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$33,397.86 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$728,616.33 of unencumbered monies to be administered. Applicant's efforts have resulted in a realized gross of \$900,000.00 recovered for the estate. Dckt. 289.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$33,397.86
Costs and Expenses	\$183.36

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees	\$33,397.86
Costs and Expenses	\$183.36,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2023. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

The Motion for Allowance of Professional Fees is granted.
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Kimberly Husted, the Chapter 7 Trustee ("Applicant") makes a First and Final Request for the Allowance of Fees and Expenses for her counsel, the Office of Desmond, Nolan, Livaich and Cunningham ("Attorney").

Fees are requested for the period February 7, 2017, through August 24, 2023. The order of the court approving employment of Attorney was entered on February 14, 2017. Dckt. 73. Applicant requests fees in the amount of \$242,007.00 and costs in the amount of \$12,029.48.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Attorney’s services for the Estate include general case administration, litigating adversary proceedings, analyzing the estate’s assets, relief from the state and adequate protection proceedings, fee and employment applications, tax issues, claim administration and objections, settlement and negotiations, and discovery. The Estate has \$728,616.33 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Attorney spent 3.5 hours in this category. Attorney communicated with the Trustee regarding various matters.

Efforts to Assess and Recover Property of the Estate: Attorney spent 5.80 hours in this category. Attorney reviewed and analyzed Debtor’s assets and communicated with Trustee and professionals.

Adversary Proceedings: Attorney spent 408.40 hours in this category. Attorney litigated adversary proceedings, which involved extensive time and efforts.

Significant Motions and Other Contested Matters: Attorney spent 56.50 hours in this category. Attorney litigated the relief from stay and adequate protection proceedings.

Tax and Claims Issues: Attorney spent 14.30 hours in this category. Attorney communicated with Trustee, conducted legal research, and spoke with accountants regarding various proceedings.

Settlement and Non-Binding ADR: Attorney spent 151.60 hours in this category. Attorney spent significant time on negotiations for adversary proceedings.

Discovery: Attorney spent 136.90 hours in this category. Attorney expended significant time for pre-litigation, including depositions.

Fee and Employment Applications: Attorney spent 46.70 hours in this category. Attorney prepared employment and fee applications for themselves, professionals, and the Trustee.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham, Partner	40.70	\$495.00	\$20,146.50
J. Russell Cunningham, Partner	93.30	\$425.00	\$39,652.50
Kristen Ditlevsen Renfro, Partner	320.80	\$275.00	\$88,220.00
Kristen Ditlevsen Renfro, Partner	173.10	\$250.00	\$43,275.00
Benjamin C. Tagert, Associate	25.00	\$275.00	\$6,875.00
Benjamin C. Tagert, Associate	10.00	\$225.00	\$2,250.00
Benjamin C. Tagert, Associate	13.70	\$100.00	\$1,370.00
Mikayla E. Kutsuris, Associate	19.90	\$195.00	\$3,880.50
J. Luke Hendrix, Partner*	84.10	\$325.00	\$27,332.50
Edward K. Dunn, Attorney	1.20	\$275.00	\$330.00
Nicholas L. Kohlmeyer, Associate	12.00	\$275.00	\$3,300.00
Nicholas L. Kohlmeyer, Associate	1.50	\$225.00	\$337.50
Nicholas L. Kohlmeyer, Associate	5.00	\$200.00	\$1,000.00
Ryan Ivanusich, Associate*	23.40	\$175.00	<u>\$4,095.00</u>
Total Fees for Period of Application			\$242,064.50

The court notes, the fees requested for J. Luke Hendrix and Ryan Ivanusich have computational errors in Applicant's application. In the application, Applicant gives the following figures:

	\$200	3.00	\$1,000.00
Ryan Ivanusich**	\$175	23.40	\$3,907.50

J. Luke Hendrix	\$325	84.10	\$27,462.50
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Thus, there is a discrepancy between what Applicant requests, \$242,007.00, and what the court calculates the actual fees are, \$242,064.50. At the hearing Applicant confirmed **XXXXXXXXXX**

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$12,029.48 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$203.35
Postage		\$321.90
Miscellaneous		\$4,547.17
Depositions		\$6,957.06
Total Costs Requested in Application		\$12,029.48

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Attorney effectively used appropriate rates for the services provided. First and Final Fees in the amount of **\$242,007.00 / \$242,064.50** are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$12,029.48 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Attorney is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$242,007.00 / \$242,064.50
Costs and Expenses	\$12,029.48

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Kimberly Husted, the Chapter 7 Trustee (“Applicant”) for their Counsel, the Office of Desmond, Nolan, Livaich and Cunningham (“Attorney”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Office of Desmond, Nolan, Livaich and Cunningham is allowed the following fees and expenses as a professional of the Estate:

Office of Desmond, Nolan, Livaich and Cunningham, Attorney
employed by the Chapter 7 Trustee

Fees	\$242,007.00 / \$242,064.50
Costs and Expenses	\$12,029.48,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Attorney for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order Setting the Hearing on the Trustee's Motion to Dismiss and Motion to Extend Deadlines was served by the Clerk of the Court on Debtor, Creditors, Debtor's Attorney, and Chapter 7 as stated on the Certificate of Service on July 6 and 7, 2023. The court computes that 48 and 49 days' notice has been provided.

The Motion to Dismiss is XXXXXXXXXX

On February 13, 2023 the Chapter 7 Trustee, Nichole B. Farris ("Trustee") filed a Motion to Dismiss for Failure to Appear at §341(a) Meeting of Creditors or, in the alternative, to Extend Deadlines for Objection to Discharge or Filing Actions for Determination for the Nondischargeability of Debt ("Motion") as to Kimberly Deann Bennett ("Debtor"). Dckt. 13. No opposition to the Motion was filed.

However, the First Meeting of Creditor Docket Entry Reports made by the Trustee disclose that Debtor and Debtor's Counsel attended the continued First Meeting of Creditors conducted on April 12, 2023, and on May 17, 2023. The Docket Entry Report for May 17, 2023, states that the First Meeting was continued to June 8, 2023. There is no Docket Entry Report for the June 8, 2023, or any further continued First Meeting. Debtor has filed her Schedules, Statement of Financial Affairs, and related documents. Debtor and Debtor's Counsel have attended some of the continued First Meeting of Creditors.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on July 24, 2023. Dckt. 22. Trustee states they incorrectly docketed that Debtor attended the Meeting of Creditors on April 12, 2023 and May 17, 2023. Trustee states they believed the case was closed on May 8, 2023, because there was a docket entry filed in error that the case was closed without discharge. Trustee reports that they did not conduct any more meetings of creditors.

Trustee does not indicate whether they still seek dismissal of the case.

AUGUST 24, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss for Failure to Appear at §341(a) Meeting of Creditors or, in the alternative, to Extend Deadlines for Objection to Discharge or Filing Actions for Determination for the Nondischargeability of Debt filed by The Chapter 7 Trustee, Nikki B. Farris (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~———— **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

~~———— **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

~~———— **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including xxxx, 202x.~~

FINAL RULINGS

8. [18-20964-E-7](#)
[KJH-5](#)

BRADLEY GILBREATH
Peter Macaluso

**MOTION FOR COMPENSATION FOR
KIMBERLY HUSTED, CHAPTER 7
TRUSTEE(S)
7-20-23 [[239](#)]**

Final Ruling: No appearance at the August 24, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Trustee Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Trustee Fees is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Bradley Gilbreath ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 21, 2018, through July 19, 2023.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a

consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the applicant must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may receive, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include normal services within a trustee's duties, as well as filing an adversary proceeding to obtain and turnover property. The Estate has \$65,930.90 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$412,000.00	\$19,911.78
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$25,661.78
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$25,661.78
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$25,661.78

The fees are computed on the total sales generated \$462,000.00 of net monies (exclusive of these requested fees and costs).

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$25,661.78 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$65,930.90 of unencumbered monies to be administered. The Chapter 7 Trustee assisted in liquidating Debtor's real property and initiated an adversary proceeding to turnover Debtor's real property. Applicant's efforts have resulted in a realized gross of \$462,000.00 recovered for the estate. Dckt. 239.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$25,661.78
Costs and Expenses	\$2,548.43

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Kimberly J. Husted, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees in the amount of \$25,661.78,
Expenses in the amount of \$2,548.43,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

9. 23-21899 -E-12 WF-4	JAKOB/GLADYS WESTSTEYN Daniel Egan	CONTINUED OBJECTION TO CLAIM OF CALIFORNIA FRANCHISE TAX BOARD, 6-20-23 [23]
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Pursuant to prior court order, Dckt. 66, the Motion for Allowance of Professional Fees was continued to August 15, 2023.

10 thru 11

Final Ruling: No appearance at the August 24, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Allowance of Professional Fees is granted.</p>

Meegan, Hanschu & Kassenbrock, the Attorney (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 22, 2022, through September 23, 2022. The order of the court approving employment of Applicant was entered on June 29, 2022. Dckt. 27. Applicant requests fees in the amount of \$11,850.00 and costs in the amount of \$39.14.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include provided services as Trustee’s general counsel, including: asset analysis and recovery, asset disposition, case administration, reviewing and disputing claims, and employment and fee applications. The Estate has \$255,035.17 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 13.0 hours in this category. Applicant assisted Trustee with general case administration and communicated with other parties’ counsel regarding assets.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.0 hours in this category. Applicant communicated with professionals regarding the estate’s interest in vehicles and real property.

Asset Disposition: Applicant spent 16.7 hours in this category. Applicant worked to liquidate vehicles and communicated with professionals regarding two real properties.

Claim Issues: Applicant spent 1.4 hours in this category. Applicant reviewed secured claims and communicated with creditors’ counsels regarding the validity and scope of the claim.

Employment and Fee Applications: Applicant spent 2.9 hours in this category. Applicant prepared, filed, and served various professionals employment and fee applications.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Anthony Asebedo	35.5	\$375.00	<u>\$13,312.50</u>
Total Fees for Period of Application			\$13,312.50

The court notes, Applicant requests only \$11,850.00. From a review of Applicant's raw billing, it appears there are numerous "no-charges."

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$39.14 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Postage Costs	\$28.34
PCR Costs	\$0.50
Copying Costs	\$10.30
Total Costs Requested in Application	\$39.14

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$11,850.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$11,850.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$11,850.00
Costs and Expenses	\$39.14

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Meegan, Hanschu & Kassenbrock, the Attorney (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Meegan, Hanschu & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:

Meegan, Hanschu & Kassenbrock, Professional employed by the
Chapter 7 Trustee

Fees	\$11,850.00
Costs and Expenses	\$39.14,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Final Ruling: No appearance at the August 24, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Allowance of Professional Fees is granted.</p>

Reynolds Law, LLP, the Attorney (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee(“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 26, 2022, through July 26, 2023. The order of the court approving employment of Applicant was entered on October 12, 2022. Dckt. 81. Applicant requests fees in the amount of \$29,000.00 and costs in the amount of \$297.44.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987))

A review of the application shows that Applicant's services for the Estate include asset disposition, case administration, claim issues, and employment and fee applications. The Estate has \$255,035.17 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 17.1 hours in this category. Applicant assisted the Trustee with case-status and communicated with creditors and counsels.

Asset Disposition: Applicant spent 50.5 hours in this category. Applicant communicated with professionals to regarding the marketing and sale of Debtor's properties.

Claim Issues: Applicant spent 5.0 hours in this category. Applicant communicated with parties' counsels regarding the validity and extent of claims.

Employment and Fee Applications: Applicant spent 2.4 hours in this category. Applicant prepared, filed, and served numerous motions for the approval of professionals' fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Anthony Asebedo, Attorney	75.00	\$400.00	<u>\$30,000.00</u>
Total Fees for Period of Application			\$30,000.00

The court notes, Applicant is only requesting total fees in the amount \$29,000, reducing their total fees requested.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$297.44 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
CourtCall	\$22.50	\$45.00
Filing Fee - 363(f) Motion	n/a	\$188.00
Postage	n/a	\$24.84
Travel to Sacramento Courthouse	n/a	\$14.60
Certified Copy of Order	\$12.50	\$25.00
Total Costs Requested in Application		\$297.44

Attempting to Recover Inappropriate Costs - CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include CourtCall.

While Applicant requested reimbursement for costs associated with making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to attend hearings via CourtCall is at the cost of the attorney included in the hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing attorneys to market their legal skills (and generate fees from a much larger client base).

Therefore, Applicant is only entitled to receive costs in the amount of \$252.44.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$29,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$252.44 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$29,000.00
Costs and Expenses	\$252.44

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Reynolds Law, LLP, the Attorney (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:

Reynolds Law, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$29,000.00
Expenses in the amount of \$252.44,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee / Chapter 13 Debtor / Debtor in Possession / Plan Administrator.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

12. [23-21407-E-11](#) **BELLA VIEW CAPITAL, LLC** **MOTION TO EMPLOY PETER G.**
[PGM-1](#) **Peter Macaluso** **MACALUSO AS ATTORNEY(S)**
7-12-23 [\[52\]](#)

Final Ruling: No appearance at the August 24, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2023. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Employ is granted.</p>
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Bella View Capital, LLC ("Debtor in Possession") seeks to employ Peter G. Macaluso ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to represent Debtor in Possession and provide legal advice for the bankruptcy case.

Debtor in Possession argues that Counsel's appointment and retention is necessary as Debtor is not sufficiently familiar with law to be able to properly prosecute their bankruptcy case.

Peter G. Macaluso testifies that he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Mr. Macaluso as Counsel for the Chapter 7 Estate. Approval of fees is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Bella View Capital, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Peter G. Macaluso as Counsel for Debtor in Possession.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

Final Ruling: No appearance at the August 24, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2023. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Compel Abandonment is granted.</p>
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After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Kurt Richter, on behalf of Eight Star Associates, LLC (“Movant”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon property commonly known as Eight Star Associates, LLC (“Property”). Movant argues that debtor, Janice Kay Lacroix and David Gerard Lacroix (“Debtor”), owns a one eighth share in the Property. Movant states the one eighth interest is cannot be sold and has no intrinsic value. Thus, the property is of inconsequential value to the estate.

CHAPTER 7 TRUSTEE’S STATEMENT OF NONOPPOSITION

Trustee filed a statement of nonopposition on July 25, 2023.

DISCUSSION

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter xx Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel Abandonment filed by Kurt Richter, on behalf of Eight Star Associates, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as A one-eighth interest in Eight Star Associates, LLC (“Property”) and listed on Schedule A/B by Debtor is abandoned by Geoffrey Richards (“the Chapter 7 Trustee”) to Janice Kay Lacroix and David Gerard Lacroix, the Debtors, by this order, with no further act of the Trustee required.

Final Ruling: No appearance at the August 24, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2023. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of First National Bank of Omaha, N.A. (“Creditor”) against property of the debtor, David Scott Lavy (“Debtor”) commonly known as 1519 Sanborn Road, Yuba City, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,342.31. Exhibit C, Dckt. 20. An abstract of judgment was recorded with Sutter County on September 20, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$354,300.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$111,959.54 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 25. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$300,000.00 on Amended Schedule C. Dckt. 14.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Scott Lavy (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of First National Bank of Omaha, N.A., California Superior Court for Sutter County Case No. CVCM20-0002175, recorded on September 20, 2022, Document No. 2022-0012687, with the Sutter County Recorder, against the real property commonly known as 1519 Sanborn Road, Yuba City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15. [23-21822](#)-E-12

RUSSELL LESTER
Brian Haddix

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-7-23 [83]

Final Ruling: No appearance at the August 24, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor’s Attorney as stated on the Certificate of Service on July 9, 2023. The court computes that 46 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$71.00 due on July 3, 2023.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.